IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 179 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAJUBABEN DADBHAI KAHOR CHARITABLE TRUST

Versus

STATE OF GUJARAT

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Appearance:

MR HARIN P RAVAL for Petitioner No. 1-3
MR KAMAL B. TRIVEDI, Additional Advocate General
with MR AD OZA, GOVERNMENT PLEADER for Respondent No. 1,3
MR HS MUNSHAW for Respondent No. 2
MR PM THAKKAR with MR NIRAJ V ASHAR for Respt No.4

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CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/05/2003

C.A.V. JUDGEMENT

#. Rule. Mr. Kamal Trivedi, learned Additional Advocate General with Mr. A.D. Oza, learned Government Pleader appears for respondents No. 1 and 3 and the later waives service of rule on behalf of these respondents. Mr. H.S. Munshaw, learned advocate appears for respondent No. 3 and waives service of rule Mr. P.M. Thakkar with Mr.N.V. Asher appears for the respondent No.4 and the later waives service of rule. With the consent of parties, this matter is finally heard.

#. The petitioners have approached this Court by invoking jurisdiction of this Court under Article 226 of the Constitution of India for an appropriate writ for quashing and setting aside the order dated 9th January 2003 passed by the District Development Officer, Amreli [hereinafter referred to as the DDO]. The petitioners have also prayed for appropriate writ to direct the DDO to grant permission under section 110 (1) of the Gujarat Panchayat Act, 1993 [hereinafter referred to as the Act] for transfer of properties consisting of building situated on survey No. 707 of village Vadia for housing of the high school and for transfer of the property situated on survey No. 708 of village Vadia for housing of the library, Bal Kindergarden, play ground, children park, and permission is also prayed for establishing a charitable hospital on the land bearing survey No. 707 and 708 of village Vadia. The petitioners have also prayed for appropriate writ to direct the respondent authorities to permit the functioning of the M.D. Kahor Arts and Commerce College, Vadia in the high school building owned by Vadia Gram Panchayat, respondent No. 4 herein. The petitioners have further prayed for restraining the respondents from interfering with the functioning of the activities of the aforesaid college in the said premises of the high school building owned by Vadia Gram Panchayat.

#. Short facts appears to be, and for which there is no dispute, is that the land bearing survey No. 708 and the property situated on the land bearing survey No. 707 are owned by the respondent No. 4 Gram Panchayat. The case of the petitioners is that the elected body of the Gram Panchayat had passed the resolutions for allotment of properties in question including the land to the petitioner-Trusts on lease basis for a period of 99 years on a token rent of Re.1/_ per year. The aforesaid decision came to be taken by the Gram Panchayat during different periods. However, since the land was to be given for a period of 99 years, a proposal came to be forwarded to the Collector for granting sanction. It

further appears that before the sanction came to be granted by the Collector, the possession of the properties in question was already handed over to the petitioner-Trusts by the office bearers of the Gram Panchayat. It is the case of the petitioners that thereafter the petitioners, pursuant to the aforesaid decision of granting the property on lease basis by the Gram Panchayat and pursuant to the further action of handing over the possession by the office bears of the Gram Panchayat, obtained permission from the competent authority so far as shifting the management of the High School is concerned, and also for the purpose of running the college. It is also the case of the petitioners during the course of the arguments through Mr. Raval that they have spent about Rs.25 lakhs for the purpose of developing the properties and for creating the facilities over the said properties. As such, as per the statement submitted by the petitioners at Annexure Z/42, the figure shown is of Rs.20 lakhs. The case of the petitioners is that the petitioners No. 1 and 2 are Public Charitable Trusts and since the Gram Panchayat was not in a position to run the High School or College or to develop the garden etc. the petitioner-Trusts, with a view to provide facilities to the residents of the village, came forward and have invested huge amount which has resulted into creating better facilities to the residents of the village.

#. On 24.5.2002, the District Collector, Amreli passed an order in purported exercise of powers under section 110 (1) of the Act by observing that no prior permission is obtained and the properties are transferred by the Gram Panchayat in breach of the conditions for allotment of the properties by the State Government to the Gram Panchayat, and, therefore, all the resolutions and the orders in respect of such properties are cancelled, and it was further ordered to take back the possession of the properties by the State Government. The petitioners preferred Special Civil Application No. 5389 of 2000 before this Court challenging the said order dated 24.5.2000 passed by the District Collector, and in the said petition initially this Court (Coram: J.R. Vora, J.) as per the order dated 8.6.2000, while issuing notice, passed an ad-interim order observing that the concerned Mamlatdar is directed that if he takes possession of the premises, then the same will be only a symbolic possession and the petitioners therein will be allowed to run the school in the property and the Court rejected the prayer for the rest of the ad-interim relief. It further appears that thereafter, in the said petition, on 22.8.2000 this Court (Coram: M.S. Shah,

J.), while admitting the petition, stayed the operation of the order passed by the Collector and also clarified that the interim order would not exonerate the petitioners from their liability to comply with the terms and conditions which may be imposed by the Gram Panchayat or by other authorities for running the school, library, park and hospital in accordance with the rules and regulations. The said Special Civil application ultimately came to be heard finally by this Court (Coram: P.B. Majmudar, J.) on 25.10.2002 and found that such powers under section 110 are required to be exercised only by the District Development Officer, and since in any case no hearing was given to the petitioners therein, the Court ultimately passed an order directing the DDO to decide the issue in connection with the resolutions passed by the Vadia Gram Panchayat and take appropriate decision whether any approval can be given for transferring the properties in question as contemplated by section 110 of the Act as well as about merits of such resolutions passed by the erstwhile Gram Panchayat. The Court further observed that the petitioners will not take any objection as regards the jurisdiction of the DDO in deciding the controversy.

#. It appears that thereafter the DDO heard the petitioners as well as the Gram Panchayat and passed an order on 9.1.2003 whereby he found that there is no compliance with sections 110 (1) and 110 (2) of the Act, and, therefore, he quashed and set aside all the resolutions passed by the Gram Panchayat and directed the Gram Panchayat to take the possession of the property. It is under these circumstances the petitioners have approached this Court.

#. Learned counsel Mr. Raval appearing on behalf of the petitioners contended interalia that the petitioners No.1 and 2 being Charitable Trusts have acted in the larger interest of the residents of the village, and more particularly because the Gram Panchayat was not in a position to bear the burden for creating the facilities for the residents of the village. He also submitted that after the resolution being passed by the Gram Panchayat, the same came to be acted upon and not only that, but for the purpose of transferring the management of the school as well as for running the college, the applications were made to the competent authority and it came to be routed through the Taluka Development Officer as well as Executive Committee of the District Panchayat and therefore he submitted that there was implied knowledge on the part of the authorities concerned, and in his submission, the order of cancellation of the resolution

and of taking back the possession is contrary to the conduct of the Panchayat authorities. Mr. Raval also submitted that the DDO has not passed the order as directed by this Court inasmuch as this Court has given directions to the DDO to decide as to whether permission under section 110 (1) can be granted or not. Instead of the same, in his submission, the DDO has set aside all the resolution of the Gram Panchayat only on the ground that such permission was not obtained. Mr. Raval also submitted that it is true that the majority of the office bearers of the Gram Panchayat at the relevant point of time when the resolutions came to be passed by the Gram Panchayat were the same, viz. that such persons were also the Trustees in the petitioner-Trusts. But, in his submission, the capacities were different and he further submitted that in any case, it is in the larger interest of the residents of the village and for creating such facilities to the residents of the village which otherwise the Panchayat could not have created, and therefore, in his submission, there is a bonafide purpose on the part of the petitioners. Mr. Raval also lastly submitted that huge investment has been made by the petitioner Charitable Trusts and if the properties are taken back by way of implementation of the impugned order of the DDO, the consequences would be that the funds of the Charitable Trusts would go in vain, and it may also consequently effect the facilities which are being enjoyed by the residents of village Vadia. Mr. Raval further submitted that the petitioner-Trusts are not interested in getting back the money if the Gram Panchayat is agreeable to retain the name put by the Trusts over the facilities which are being created by the petitioner-Trusts over the properties in question, and he also submitted that for the better management of the various Trust activities, if this Court orders for composition of the Committee in which the representative of the DDO, Dist Collector or State Government is there, the petitioners have no objection because in his submission the ultimate purpose is to see that the facilities are continued for the residents of village Vadia. Mr. Raval also submitted that the present action is under political pressure with a view to tarnish the popularity of the office bearers of the petitioner-Trusts who are also politically associated with the opposition party than the party in power at the State level, and he submitted that the brother of the present Sarpanch of the Gram Panchayat is also a sitting Minister in the State Government, and, therefore there is ulterior motive and the exercise of the power and the actions and order are with malafide purpose and not bonafide. Mr. Raval also submitted that a similar situation had arisen in a case

of allotment of the land by the State Government to Gandhinagar Charitable Trust wherein the then Honourable Chief Minister was also a Managing Trustee and he was also Chief Minister at the relevant point of time. The Review Committee of the State Government had subsequently set aside the decision of allotment of land to the Trust and in the challenge made by the Trust against the said decision of the State Government, this Court had upheld the decision of the State Government of cancelling the allotment. He submitted that the matter was carried before the Apex Court, and in the decision of the Apex Court in the case of GANDHINAGAR CHARITABLE TRUST vs. STATE OF GUJARAT AND OTHERS in Civil Appeals No. 5996/01 and 5997/01, the Apex Court observed that ipso facto the allotment made in favour of the Trust cannot be held to be vitiated even if the Chief Minister was the Managing Trustee of the Trust. Mr. Raval submitted that the facts in the instant case are also identical to the aforesaid case, and therefore the resolution passed by the Panchayat cannot be cancelled on the ground that the majority of the persons were the same as Trustees or Managing Trustees as the case may be in the petitioner-Trusts at the relevant point of time.

#. Mr. Kamal B. Trivedi, learned Additional Advocate General submitted interalia that from the details given in paragraph 5.1 of the affidavit filed by Mr. N.D. Patel, Under Secretary of the Panchayat Department, it appears that when the resolutions were passed by the erstwhile Gram Panchayat there were four Trustees of the petitioner No.1 Trust who were members of the erstwhile body of the Panchayat. Mr. Trivedi also submitted that the Gram Panchayat, in any case, had no authority to transfer the land and properties without prior permission under section 110 (1) of the Act, and, therefore, the resolutions were ab-initio void and they are rightly cancelled by the DDO. He also submitted that the action of the erstwhile Panchayat through its resolution amount to nothing but a fraud inasmuch as huge properties are given away on lease on a nominal, token rent of Re.1/per year. In his submission, majority of the facilities being created are from the grant of the Panchayat and since the Sarpanch was also the Chairman of the Trust and services of majority of the staff members of the Gram Panchayat is used, it cannot be said that the Trusts have spent huge amount for creation of the so called facilities.

#. Learned advocate Mr. Munshaw has adopted the submissions made by the learned Additional Advocate General, and he submitted that since the DDO found that

such sanction cannot be granted, the order has been legally passed. He also submitted that the Gram Panchayat could not have passed the resolutions for disposal of the properties in such a fashion, and, therefore, the DDO has rightly refused the consent.

#. On behalf of the Gram Panchayat, learned counsel Mr. P.M. Thakkar submitted interalia that there is no dispute on the point that the office bearers were the same. He submitted that earlier this Court set aside the order of the Collector because in any case hearing was not given to the petitioners Trust before passing the order whereby the resolutions of the Gram Panchayat were cancelled, and it was ordered to take back the possession by the State Government. He submitted that now the hearing is given, and since the resolution were found ab-initio void and in any case there is misuse of powers by the office bearers of the Gram Panchayat in distributing public largess to the petitioner-Trusts, the order passed by the DDO is perfectly legal and valid. Mr. Thakkar, upon the query put forth by the Court during the course of hearing has also declared under the instructions that if this Court finds that the investment made by the Public Trust should not go in vain, the Gram Panchayat is ready and willing to pay the amount which may be assessed by an independent authority of the Town Planning Department or any other agency which may be nominated by the Court, and he further stated that the Gram Panchayat will see to it that none of the facilities over the properties in question are curtailed and they shall be continued, if required after following necessary procedure required under the law.

##. Before I proceed to examine the rival contentions raised by the learned counsel appearing for both the sides, it would be worthwhile to refer to certain observations of a Division bench of this Court [in which I was also a member] in its judgment in the case of V.N. RABARI vs. STATE reported in 2003 (1) GLR 97, wherein the Court examined the action of the State Government of superseding the elected body of the market committee. In paragraph 9, the Court observed as under:

> "The status of the elected members of the market committee is more or less like the status of other elected members holding the office under the local authorities or statutory authorities. It is true that the market committee has been given powers to purchase and sell properties, but its powers to purchase and sell the properties are coupled with the duty to ensure that such

> powers are used for enforcement of the objects of the Act, rules and bye-laws. These powers are coupled with the public duty and such powers are not like powers of individual persons managing their own affairs, but there is something more about the accountability. It is needless to point out that when any representative is elected by voters, some faith is reposed on such elected representative by the voters that the so elected representative would exercise his powers under respective statutes for the larger interest of the institution or the local body by acting as a wise person keeping in view the pros and consequences of the action to be taken and keeping in view of the interest of the institution or the body."

##.# Therefore, those who are elected representatives, are accountable to the public at large and in any case, it would be their duty to see that properties of the body to which they are elected are used or disposed of in a manner like trustees of the properties and which would advance the cause of larger interest of the body to which they represent. It is now well settled that for disposal of public property, the normal procedure would be to hold a public auction and to invite offers from all interested persons and to fetch maximum revenue therefrom keeping in view the availability of the offers. Unless there are compelling, extraordinary circumstances, no departure should be made from the aforesaid settled norms for disposal of public property. The petitioners have not even contended that the aforesaid settled norms for disposal of public property were ever followed by the Gram Panchayat. Further it is not even contended by the petitioners that the Gram Panchayat, before taking decision, had taken any steps to get the assessment of the rental value of the properties in question through any expert agency like Town Planning Department or Valuation Department of the State Government. It is not even the case of the petitioners that the token rent is equivalent to the market rent of the properties in question for giving on lease for 99 years. The material produced on record in my view can not be said to be sufficient extraordinary circumstances warranting the departure from the settled norms for disposal of public properties. Had the elected representatives of the Gram Panchayat who were in power at the relevant point of time when the resolutions came to be passed, acted as trustees of the properties keeping in mind the principles of public duty and accountability, they would not have passed such resolutions for disposal of huge properties

of Gram Panchayat on lease for a period of 99 years, that too at the token rent of Re.1/_ per year. Therefore, under the circumstances, there cannot be any any conclusion than to hold that the decision at the relevant point of time taken by the then body of the Gram Panchayat is without following the settled norms for disposal of public property.

##. The aforesaid is coupled with the factual aspect of the case that when the resolution came be to be passed in favour of the petitioner-Trusts, Manubhai Dadubhai Kahor, Sarpanch of the Gram Panchayat was the Chairman of the petitioner No.1 Trust. Moreover, Shri Hasrukhbhai Dadubhai Kahor, Smt. Kailasba Dadubhai Kahor and Shri Vanrajbhai Dadubhai Kahol who were members of the erstwhile body of the Panchayat were also Trustees of the petitioner No. 1 Trust. This clearly go to show that those who were in power in the Gram Panchayat at the relevant point of time and who had the power to pass the resolution were the same and such persons were the beneficiaries of the resolution, may be by way of different capacities as Trustees of the Trust. In my view, it can reasonably be said that there is no independent exercise of the power by the then office bearers of the Gram Panchayat and it would be a case of deemed bias because the parties who exercised the power and the parties who are beneficiaries in majority and substantially are the same. Therefore, in view of the aforesaid it can be said that the decisions of the Gram Panchayat as per the resolutions which were subject matter of impugned order, in any case would be illegal so far as the disposal of public property is concerned. I would like to observe that if such tests are not put at the time of disposal of public property by the office bearers of a statutory body or elected representatives of any local authority, in my view, no public property would be safe, and even the transparency of the mode of disposal of public property, principles of equal opportunity and public revenue itself shall be in jeopardy.

##. Further, even otherwise also, the action, on the face of it, would consequently affect adversely the revenue of the Gram Panchayat inasmuch as the property is sought to be transferred by the so called resolutions of the Gram Panchayat at a token rent of Re.1/_ per year. Mr. Raval had made an attempt to submit that the policy of allotment on token rent of Re.1/_ is not unknown even in the State Government. Therefore, he had submitted that such policy, if adopted by the Gram Panchayat, cannot be said to be unreasonable. The distinguishing

feature while the State acting under the said policy would be that there is no vesting in the State of the property in question subject to obtaining of the prior permission under section 110 of the Act as it is in the case of Gram Panchayat. Therefore, in my view, when the vesting itself is subject to statutory embargo of following mandatory procedure, no such parity can be had by any Gram Panchayat while disposing of its property at the token rent of Re.1/_ per year. I am not required to examine the wider question as to whether the State Government can dispose of the public property may be by way of lease on a token rent of Re.1/_ per year, since such question is not arising in the present case and hence the said question is kept open. The reliance placed upon the observations of the Apex Court in case of Gandhinagar Charitable Trust [supra] by Mr. Raval, in my view, is ill founded inasmuch as, as observed earlier, it cannot be said that the Gram Panchayat enjoys the same power as it is enjoyed by the State Government for disposal of its properties. Further, in the case before the Apex Court, since the Review Committee had taken a decision of cancellation of the allotment without giving any opportunity of hearing to the Trust concerned, the Apex Court observed that the allotment stands valid unless and until it is annulled by the procedure of law. In the present case, the hearing has been given by the DDO, and, therefore, the facts situation of the present case cannot be equated with the case of Gandhinagar Charitable Trust [supra]. Hence, in my view, the said judgment is of no help to the petitioners.

##. The contention of Mr. Raval that the DDO has not examined the point as to whether permission under section 110 of the Act can be granted or not, in my view, is of no help to the petitioners because as observed earlier, when this Court, on the facts of the present case, has found that the decision of the Gram Panchayat for allotment of the land is illegal merely because DDO has not considered some grounds on the point as to whether permission could be granted or not, in my view, would not be a sufficient ground to interfere or to quash and set aside the order of the DDO. The power under section 110 of the Act are not like judicial powers or even like quasi judicial powers. In my view, such powers are administrative powers of the DDO under sec. 110 of the Act and it is well settled that while taking administrative action, it is not necessary for the authority to record all reasons for maintaining the final decision. When the DDO has found that the permission should not be granted to the Gram Panchayat for disposal of the property at the token rent of Re.1/_, the said

order would not be vulnerable or vitiated merely because some reasons are not recorded while taking such decision.

##. Mr. Raval also made an attempt to submit that the order passed by the DDO would be in contravention to the order passed by this Court, and, therefore also, the order cannot be allowed to be maintained. In my view, since at the first stage when the Collector passed the order, hearing was not given to the petitioner-Trusts, therefore this Court while finally disposing of the petition directed for giving opportunity of hearing, and merely because some observations are made by the Court regarding the mode and method of exercising of the powers by the DDO under sec. 110, would not change the character of the power which is administrative in nature. The order of the DDO cannot be upset merely because while recording the reasons he has not discussed certain parts or aspects of the order. As observed earlier, when this Court has also found that the resolutions of the Gram Panchayat are illegal, in my view, it cannot be said that the DDO was not justified in rejecting the sanction and the aspect which is sought to be canvassed by Mr. Raval would not be of any consequence. It is well settled that this Court, while exercising powers under Article 226 of the Constitution, would not interfere with the order passed by the authority even if it is illegal, if such interference by this Court is to result into perpetuating illegalities or to result into creating a situation enabling the party to take undue benefit. If the order of DDO is set aside on the ground that certain observations made by this Court are not recorded as considered, in my view, the consequential effect would be that the illegal resolutions of the Gram Panchayat shall be allowed to operate and it would perpetuate illegalities and would also enable the petitioners to get undue benefit of such illegal resolutions of the Gram Panchayat and such can never be the object of exercising the extra ordinary, equitable and discretionary writ jurisdiction of this Court under Article 226 of the Constitution of India.

##. As regards the allegations of political malafides are concerned, the petitioners have not impleaded the persons concerned against whom the allegations of political malafides are made. Further there is no cogent material produced on record to show that the DDO while exercising the powers under section 110 has acted under such political pressure. Moreover, when this Court, as observed earlier, has found that the resolutions passed by the Gram Panchayat are illegal and the DDO was justified in refusing the sanction and the impugned order

of the DDO is not required to be interfered with, in my view, the allegations of political malafide is not only irrelevant but if the order is interfered with in any case on such ground, the same would further perpetuate the illegalities inasmuch as the illegal resolutions passed by the Gram Panchayat would be allowed to operate, and therefore, I cannot accept the contention raised by Mr. Raval that there is no bonafide purpose in exercising the power and the action is with a malafide purpose of tarnishing the popularity of the office bearers of the petitioner-Trusts, who belong to the opposite political party.

##. As regards the contention of Mr. Raval regarding implied conduct on the part of the TDO and the Executive Committee of the District Panchayat, it is pertinent to note that the vesting of the properties in question into the Gram Panchayat is subject to following of the provisions of section 110 of the Act. Merely because for the purpose of running High School or College, as the case may be, the applications came to be routed through certain authorities, it cannot be said that permission came to be granted under section 110 of the Act. It is well settled that there cannot be any estoppel against the provisions of the statute. Further, the TDO and the executive committee of the District Panchayat are altogether different than the DDO while exercising powers as competent authority to accord sanction for disposal of the property. It is not even the case of the petitioners that at any point of time the DDO dealt with the matter and granted implied consent for any such purposes nor is the case of the petitioners that the District Panchayat is in any manner benefitted by the aforesaid processing of the application by the Executive Committee of the District Panchayat. Under these circumstances, I find that the contention of Mr. Raval is wholly misconceived, and in any case, it cannot operate as a bar to the mandatory requirement of section 110 of the Act, and hence the said contention also fails.

##. The last contention raised by Mr. Raval that the petitioners No.1 and 2 are a charitable Trusts and have acted for creating facilities for the benefit of the residents of village Vadia, and that the investment made by the Trusts should not go in vain, deserves consideration. In normal circumstances, this Court would not entertain the request of a party who is beneficiary of a wrong committed by the office bearers of the Gram Panchayat. However, there is no dispute on the point that the petitioners No.1 and 2 are Public Charitable Trusts, nor can it be disputed that if not to the fullest

extent but to some extent, the facilities of garden or school or college etc. on account of the illegal resolution and the investment made by the Trust, have been made available to the residents of the village. Further the petitioners are Charitable Trusts and even if the contention of the Gram Panchayat is accepted that to some extent the funds of the Gram Panchayat is used for creating facilities and the service of the staff of the Gram Panchayat is made available for creating the facilities, it cannot be well said that no investment whatsoever must have been made by the petitioner-Trusts for creation and continuation of such facilities over the properties in question. I am not examining the said aspect in detail because learned counsel Mr. Thakkar, appearing for the Gram Panchayat has fairly submitted that if an independent agency which can be said to be expert in this regard is assigned with the work of assessment of the amount of investment, the gram Panchayat would be ready to pay the same to the petitioner-Trusts. In view of the said fair stand taken by the Gram Panchayat for ensuring that the investment made by the petitioners Charitable Trusts may not go in vain, in my view, the petitioners would not be justified in insisting for continuation of the operation of aforesaid illegal resolution of the Gram Panchayat for which the permission and the sanction is refused by the DDO. However, in my view, proper care can be taken to see that the investment made by the Charitable Trusts may not go in vain and the facilities are continued to be made available to the residents of the village, because even as observed earlier, the Gram Panchayat has declared through their learned counsel that they shall see to it that all facilities including the school and college will be continued by the Gram Panchayat.

##. An attempt is made by Mr. Raval to make an offer of not claiming the amount towards the investment made by the petitioner-Trusts if the name is maintained as given by the petitioner-Trusts to the High School, College, Garden etc. Consideration of this submission would be in realm of exercising discretion on the administrative side by the respondent No.4 Gram Panchayat. If the respondent No.4 Gram Panchayat finds that it is a good offer and as a consequence thereof the respondent No.4 may not be required to spend any money, it may accept the offer. But, if the Gram Panchayat finds that there are other Charitable Trusts or financial capacity of the gram Panchayat is such that it can bear the burden of the amount to be paid towards the investment as may be assessed by the authority nominated by the Court, it may not even accept such offer. I find it proper to leave

the said aspect to the wisdom of elected body of the Gram Panchayat. But certainly, the petitioners cannot insist as of right to stick to the benefits of the aforesaid illegal resolutions of the Gram Panchayat pursuant to which the properties in question are handed over to the petitioner-Trusts.

##. Mr. Raval also made an attempt to submit that there can be said to be implied conduct on the part of the TDO and Executive Committee of the District Panchayat to have knowledge of the so called resolutions and he further submitted that in any case, even if this Court is to hold that the resolution of the Gram Panchayat were illegal or that the order of the DDO is not required to be interfered with, then also for the purpose of transferring the management of the school or college or any other facilities, as the case may be, unless and until proper procedure is followed under the provisions of the relevant laws, the Gram Panchayat on its own cannot take over the management and start running the school, college etc. Mr. Thakkar during the course of the arguments, did submit that whatever procedure known to law will be followed by the Gram Panchayat and therefore, in my view, such contention raised by the petitioners does not help the petitioners in any way for continuing with enjoyment of the benefit of the illegal resolutions passed by the Gram Panchayat and for ultimately assailing the orders passed by the DDO whereby the sanction is not granted.

##. In view of the aforesaid discussion, I find that the resolutions passed by the Gram Panchayat for which permission was sought from the DDO, are illegal and the DDO was perfectly justified in refusing the sanction under section 110 of the Act. As a consequence thereof, in any case, the petitioners would not be entitled to the reliefs for issuing directions against the respondent authorities to grant permission or sanction to the aforesaid illegal resolutions passed by the Gram Panchayat for transferring the properties in question in favour of the petitioners. So far as the investment made by the petitioner-Trusts is concerned, the same shall be taken care of in the directions which will be given hereinafter.

##. In view of the aforesaid discussions, observations and findings recorded, the petition fails so far as its challenge to the legality and validity of the order passed by the DDO dated 9th January 2003 is concerned. The petition also consequently fails for giving directions to the authorities to accord sanction for

implementing the resolution of the Gram Panchayat.

##.# However, as far as the investment made by the petitioner-Trusts over the property in question are concerned, the respondent Gram Panchayat shall be at liberty to act in accordance with law pursuant to the orders passed by the DDO, the legality of which is upheld. But such implementation of the decision of the DDO shall be subject to a further condition that the competent officer of the town planning department or valuation department of the Amreli District as may be appointed by the District Collector shall assess the amount of investment made by the petitioner-Trusts over the property in question, and such assessment shall be made by the concerned authority after giving opportunity of hearing to the petitioners as well as respondent no.4 Gram Panchayat. After the amount is assessed and the figure is arrived at, the said competent authority shall intimate in writing to the Gram Panchayat as well as to the petitioners. The appointment of the authority to make the assessment shall be made immediately and the authority so appointed shall assess the amount and complete the exercise thereof and intimate the assessment as stated above, within a period of six months from the date of receipt of the order of this Court.

##.# It will be open to the petitioners to submit an offer to the Gram Panchayat to maintain the name over the concerned facilities in lieu of payment of the said amount so assessed by the competent authority, and if such application is made by the petitioners, the Gram Panchayat shall be at liberty to decide it in accordance with law, keeping in view the observations made hereinabove.

##.# In the event of no such application preferred by the petitioners or the application so preferred by the petitioners to the Gram Panchayat is rejected, the amount so assessed by the aforesaid competent authority shall be paid by the Gram Panchayat to the petitioner-Trusts by an account payee cheque within a reasonable period which will not in any case exceed more than three months from the date of such situation as the case may be.

##.# However, it is clarified that the aforesaid exercise of assessment of the amount of investment or liberty to apply to maintain the name in lieu of non-payment of the amount so assessed or payment thereof by the Gram Panchayat as the case may be, shall in no manner prejudice the rights of the Gram Panchayat of acting pursuant to the order of the DDO, nor such directions

shall be construed as giving any right whatsoever to the petitioners of creating any hinderance to the Gram Panchayat in taking action pursuant to the decision of the DDO.

##. Subject to the aforesaid observations and direction, the petition is dismissed. Rule is discharged by maintaining the directions accordingly. No order as to costs.

[JAYANT PATEL, J.]

##. After pronouncement of this order, Mr. Raval, learned advocate for the petitioners requests to continue the ad-interim relief which was granted earlier till 2nd June 2003. Considering the facts and circumstances of the case, the ad-interim relief granted earlier shall stand extended till 2nd June 2003.

[JAYANT PATEL, J.]

mathew